MOTION FILED
JAN 11 1980

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. 79-48

CECIL D. ANDRUS, Secretary of the Interior, *et al.*,
Petitioners,

v.

GLOVER CONSTRUCTION COMPANY,
Respondent.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

MOTION FOR LEAVE TO FILE
BRIEF OF

THE ASSOCIATION ON AMERICAN INDIAN AFFAIRS, INC., THE NATIONAL CONGRESS OF AMERICAN INDIANS, INC., THE ALASKA FEDERATION OF NATIVES, THE CALIFORNIA TRIBAL CHAIRMEN'S ASSOCIATION, THE MONTANA INTER-TRIBAL POLICY BOARD, THE ARAPAHOE TRIBE OF THE WIND RIVER RESERVATION, THE ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK RESERVATION, THE CHEYENNE RIVER SIOUX TRIBE, THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION, THE CROW TRIBE, THE HOOPA VALLEY TRIBE, THE METLAKATLA INDIAN COMMUNITY, THE MICCOSUKEE TRIBE OF INDIANS, THE SENECA NATION OF INDIANS, THE SHOSHONE TRIBE OF THE WIND RIVER RESERVATION, THE STANDING ROCK SIOUX TRIBE, COOK INLET REGION, INC., AND NANA REGIONAL CORPORATION, INC. AS *AMICI CURIAE*

[Counsel listed inside front cover]

Washington, D.C. • THIEL PRESS • (202) 638-4521

REID PEYTON CHAMBERS
2030 M Street, N.W.
Washington, D.C. 20036
Attorney for the Assiniboine and Sioux Tribes of the Fort Peck Reservation, the Shoshone Tribe of the Wind River Reservation, and the Standing Rock Sioux Tribe

ARTHUR LAZARUS, JR.
600 New Hampshire Avenue, N.W.
Washington, D.C. 20037
Attorney for the Association on American Indian Affairs, Inc., the Seneca Nation of Indians, the Cheyenne River Sioux Tribe, the Metlakatla Indian Community and the Miccosukee Tribe of Indians

RICHARD A. BAENEN
1735 New York Avenue, N.W.
Washington, D.C. 20006
Attorney for the National Congress of American Indians, Inc., the Alaska Federation of Natives, the California Tribal Chairmen's Association, the Montana Inter-Tribal Policy Board, the Arapahoe Tribe of the Wind River Reservation, the Confederated Salish and Kootenai Tribes of the Flathead Reservation, the Crow Tribe, the Hoopa Valley Tribe, and NANA Regional Corporation, Inc.

MONROE E. PRICE
612 South Flower Street
Los Angeles, California 90017
Attorney for Cook Inlet Region, Inc.

Of Counsel:

WILLIAM R. PERRY
SONOSKY, CHAMBERS & SACHSE
Washington, D.C. 20036

W. RICHARD WEST, JR.
BETH LABSON-FREEMAN
FRIED, FRANK, HARRIS, SHRIVER & KAMPELMAN
Washington, D.C. 20037

GLENN P. SUGAMELI
WILKINSON, CRAGUN & BARKER
Washington, D.C. 20006

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. 79-48

CECIL D. ANDRUS, Secretary of the Interior, *et al.*,
Petitioners,

v.

GLOVER CONSTRUCTION COMPANY,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE*

Pursuant to Rule 42(3), the Association on American Indian Affairs, Inc., a tax-exempt organization having its principal office at 432 Park Avenue South, New York, New York 10016, the National Congress of American Indians, Inc., the Alaska Federation of Natives, the California Tribal Chairmen's Association, the Montana Inter-Tribal Policy Board, the Arapahoe Tribe of the Wind River Reservation, the Assiniboine and Sioux Tribes of the Fort Peck Reservation, the Cheyenne River Sioux Tribe, the Confederated Salish and Kootenai Tribes of the Flathead Reservation, the Crow Tribe, the Hoopa Valley Tribe, the Metlakatla Indian Community, the

Miccosukee Tribe of Indians, the Seneca Nation of Indians, the Shoshone Tribe of the Wind River Reservation, the Standing Rock Sioux Tribe, Cook Inlet Region, Inc., and NANA Regional Corporation, Inc. move the Court leave to file the attached brief *amici curiae* in support of petitioner in the above-captioned case. *Amici* requested the parties to consent to the filing of this brief beginning on December 12, 1979. The petitioner United States of America has consented to the filing of this brief; the respondent Glover Construction Company has refused so to consent.

The Association on American Indian Affairs, Inc., is a nonprofit membership corporation organized under the laws of the State of New York for the purpose of protecting the rights and improving the welfare of American Indians. The Association is the largest Indian-interest organization in the United States, and is nationwide in scope, with a membership of 50,000 that consists of both Indians and non-Indians.

The Association frequently has participated in leading cases involving issues of Indian law before the federal and state courts, including the filing of a brief with this Court in *DeCoteau v. District County Court,* 420 U.S. 425 (1975), and the filing of *amicus curiae* briefs in *Washington v. Washington State Passenger Fishing Vessel Ass'n,* 443 U.S. ___, 99 S.Ct. 3055 (1979), *Oliphant v. Suquamish Indian Tribe,* 435 U.S. 191 (1978), *Rosebud Sioux Tribe v. Kneip,* 430 U.S. 584 (1977), *Mescalero Apache Tribe v. Jones,* 411 U.S. 145 (1973), *Affiliated Ute Citizens v. United States,* 406 U.S. 128 (1972), *Puyallup Tribe v. Dept. of Game,* 391 U.S. 392 (1968), and *Warren Trading Post Co. v. Arizona State Tax Comm'n,* 380 U.S. 685 (1965).

The National Congress of American Indians, Inc., is a nonprofit association of 146 Indian tribes, including most of the major tribes in this country. It was incorporated in Oklahoma in 1954 to represent the interests of the Indian tribes of this country, and maintains its national headquarters in Washington, D.C.

The Alaska Federation of Natives, located in Anchorage, Alaska, is composed of the twelve regional groups established under the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et seq.* (1976).

The California Tribal Chairmen's Association is a nonprofit corporation formed under the authority of the Indian Self Determination and Education Assistance Act. This statewide organization consists of thirty-one federally recognized tribes in California, with its central office in Sacramento.

The Montana Inter-Tribal Policy Board is an association of all federally recognized tribes in Montana, and maintains its offices in Billings.

NANA Regional Corporation, Inc., and Cook Inlet Region, Inc., are Alaska Native corporations formed under the Alaska Native Claims Settlement Act. NANA maintains its principal offices in Kotzebue, Alaska. Cook Inlet's offices are located in Anchorage.

The Arapahoe Tribe of the Wind River Reservation, Wyoming, the Shoshone Tribe of the Wind River Reservation, Wyoming, the Assiniboine and Sioux Tribes of the Fort Peck Reservation, Montana, the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota, the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, the Hoopa Valley Tribe of California, the Crow Tribe of the Crow Reservation, Montana, the Metlakatla Indian Community of

the Annette Islands Reserve, Alaska, the Miccosukee Tribe of Indians of Florida, the Seneca Nation of Indians of New York, and the Standing Rock Sioux Tribe of North Dakota and South Dakota are important federally recognized Indian Tribes which govern their reservations. Moreover, their reservation economies, which uniformly are in an undeveloped or underdeveloped state, depend in significant degree on the economic stimulus attributable to contracts awarded to Indian-owned firms by the Bureau of Indian Affairs under the Buy Indian Act.

This case presents a general issue of great and continuing concern to the *Amici*—whether Indian preference laws enacted by Congress may be relied upon to enhance the social and economic development of Indian tribes and Indian-owned corporations. In the present case, *Amici* are concerned with this broad question in a specific context—namely, whether the Buy Indian Act, 25 U.S.C. § 47 (1976), which established a preference for the "employment of Indian labor and the purchase of products of Indian industry" retains vitality in light of the advertising requirements of the Federal Property and Administrative Services Act, 41 U.S.C. §§ 252, 253 (1976).

Amici submit the attached brief in order to assist the Court in recognizing that the decision of the United States Court of Appeals for the Tenth Circuit misconstrues the intended scope of the Buy Indian Act and contravenes the numerous precedents of this Court concerning appropriate principles of statutory construction. Since the immediate parties are not likely to address the specific points which *Amici* propose to discuss, and since such discussion thus may be helpful to

the Court, *Amici* request that their motion for leave to file the attached brief *amici curiae* be granted.

Respectfully submitted,

REID PEYTON CHAMBERS
2030 M Street, N.W.
Washington, D.C. 20036
Attorney for the Assiniboine and Sioux Tribes of the Fort Peck Reservation, the Shoshone Tribe of the Wind River Reservation, and the Standing Rock Sioux Tribe

ARTHUR LAZARUS, JR.
600 New Hampshire Avenue, N.W.
Washington, D.C. 20037
Attorney for the Association on American Indian Affairs, Inc., the Seneca Nation of Indians, the Cheyenne River Sioux Tribe, the Metlakatla Indian Community and the Miccosukee Tribe of Indians

RICHARD A. BAENEN
1735 New York Avenue, N.W.
Washington, D.C. 20006
Attorney for the National Congress of American Indians, Inc., the Alaska Federation of Natives, the California Tribal Chairmen's Association, the Montana Inter-Tribal Policy Board, the Arapahoe Tribe of the Wind River Reservation, the Confederated Salish and Kootenai Tribes of the Flathead Reservation, the Crow Tribe, the Hoopa Valley Tribe, and NANA Regional Corporation, Inc.

MONROE E. PRICE
612 South Flower Street
Los Angeles, California 90017
Attorney for Cook Inlet Region, Inc.

Of Counsel:

WILLIAM R. PERRY
SONOSKY, CHAMBERS
& SACHSE
Washington, D.C. 20036

W. RICHARD WEST, JR.
BETH LABSON-FREEMAN
FRIED, FRANK,
HARRIS, SHRIVER
& KAMPELMAN
Washington, D.C. 20037

GLENN P. SUGAMELI
WILKINSON, CRAGUN
& BARKER
Washington, D.C. 20006

TABLE OF CONTENTS

Page

INTEREST OF *AMICI CURIAE* 1

SUMMARY OF ARGUMENT 4

ARGUMENT 5

1. The language and historical context of the Buy Indian Act evidence broad remedial purposes to increase productive employment and enterprise by Indians and reduce Indian dependence on the Government 7

2. The decision below imperils numerous opportunities for productive employment by Indians and dramatically increases their dependence on the Government—the very evils sought to be avoided by the Buy Indian Act 14

3. The principles reaffirmed in *Mancari* clearly control this case 21

CONCLUSION 23

TABLE OF AUTHORITIES

Cases:

Bryan v. Itasca Co., 426 U.S. 373 (1976) 14, 19

Bulova Watch Co. v. United States, 365 U.S. 753 (1961) 6

Choate v. Trapp, 224 U.S. 665 (1912) 14

DeCoteau v. District County Court, 420 U.S. 425 (1975) 9

Fisher v. District Court, 424 U.S. 382 (1976) 19

Glover Construction Co. v. Andrus, 591 F.2d 554 (10th Cir. 1979) 8, 9, 22

Mattz v. Arnett, 412 U.S. 481 (1973) 10

McClanahan v. Arizona Tax Comm'n, 411 U.S. 164 (1973) 14, 19

Metlakatla Indian Community v. Adams, 427 F.Supp. 871 (D.D.C. 1977) 20

Morton v. Mancari, 417 U.S. 535 (1974) . . . . . *passim*

Cases, continued: Page

Rodgers v. United States, 185 U.S. 83 (1902) 6

Rosebud Sioux Tribe v. Kneip, 430 U.S. 584 (1977) 9

Squire v. Capoeman, 351 U.S. 1 (1956) 14

Tennessee Valley Authority v. Hill, 437 U.S. 153 (1978) 22

Village of Kake v. Egan, 369 U.S. 60 (1962) 14

Wilson v. Omaha Indian Tribe, 442 U.S. ___, 99 S.Ct. 2529 (1979) 14

Statutes:

25 U.S.C. § 47 (1976) (Buy Indian Act) . . . . . *passim*

25 U.S.C. §§ 331 *et seq.* (1976) (General Allotment Act of 1887) 10

25 U.S.C. §§ 450 *et seq.* (1976) (Indian Self Determination and Education Assistance Act of 1975) 15

25 U.S.C. §§ 1451 *et seq.* (1976) (Indian Financing Act of 1974) 15

41 U.S.C. §§ 252, 253 (1976) (Federal Property and Administrative Services Act of 1949) . . . . . *passim*

42 U.S.C. §§ 2000 *et seq.* (1976) (Equal Employment Opportunity Act of 1972) 5

43 U.S.C. §§ 1601 *et seq.* (1976) (Alaska Native Claims Settlement Act) 3

Act of May 15, 1886, c. 333, 24 Stat. 29, 46 7

Act of March 2, 1887, c. 320, 24 Stat. 449, 466-67 7

Act of June 29, 1888, c. 503, 25 Stat. 217, 237 7

Act of March 2, 1889, c. 412, 25 Stat. 980, 1002 7

Act of August 19, 1890, c. 807, 26 Stat. 336, 360-61 7

Act of March 3, 1891, c. 543, 26 Stat. 989, 1014-15 7

Act of July 13, 1892, c. 164, 27 Stat. 120, 143-44 7

Act of March 3, 1893, c. 209, 27 Stat. 612, 639 7

Act of August 15, 1894, c. 290, 28 Stat. 286, 312 8

Act of March 2, 1895, c. 188, 28 Stat. 876, 907 8

Statutes, continued: Page

Act of June 10, 1896, c. 398, 29 Stat. 321, 348-49 8

Act of June 7, 1897, c. 3, 30 Stat. 62, 90 8

Act of July 1, 1898, c. 545, 30 Stat. 571, 595 8

Act of March 1, 1899, c. 324, 30 Stat. 924, 946 8

Act of May 31, 1900, c. 598, 31 Stat. 221, 246 8

Act of March 3, 1901, c. 832, 31 Stat. 1058, 1083 8

Act of May 27, 1902, c. 888, 32 Stat. 245, 273-74 8

Act of March 3, 1903, c. 994, 32 Stat. 982, 1006 8

Act of April 21, 1904, c. 1402, 33 Stat. 189, 216 8

Act of March 3, 1905, c. 1479, 33 Stat. 1048, 1077 8

Act of June 21, 1906, c. 3504, 34 Stat. 325, 326 8

Act of March 1, 1907, c. 2285, 34 Stat. 1015 8

Act of April 30, 1908, c. 153, 35 Stat. 70, 71 8

Act of June 25, 1910, c. 431, 36 Stat. 855, 861 7

Congressional Debates:

28 Cong. Rec. 2026 (1896) 9, 13

33 Cong. Rec. 1353 (1900) 11

42 Cong. Rec. 1418 (1908) 11

42 Cong. Rec. 1694 (1908) 11

42 Cong. Rec. 1706 (1908) 11-12

42 Cong. Rec. 2643 (1908) 9

116 Cong. Rec. 23,258 (1970) 15

Administrative and Legislative Materials:

American Indian Policy Review Commission, *Final Report* (1977) 15

Bartow, *638 Consultants* (1979) (Study under BIA Contract No. 9C50-0100211) 16

20 Bureau of Indian Affairs Manual 1 (1976) 17

Page

Administrative and Legislative Materials, continued:

Economic Development Administration, U.S. Dept. of Commerce and Bureau of Indian Affairs, U.S. Dept. of the Interior, *1979 Buyers Guide to Products Manufactured on Indian Reservations* 16

44 Fed. Reg. 62,510, 62,513 (1979) 15

Report of the Commissioner of Indian Affairs (1906) 13

Report of the Commissioner of Indian Affairs (1907) 8

Report of the Commissioner of Indian Affairs (1908) 13

Report of the Commissioner of Indian Affairs (1909) 13

Six Weekly Comp. of Pres. Doc. (1970) 15

Miscellaneous:

M. Luckaczer, *The Federal Buy Indian Program* (1976) 17

D. Otis, *The Dawes Act and the Allotment of Indian Lands* (1973) 10

F. Prucha, *American Indian Policy in Crisis, Christian Reformers and the Indian*, 1865-1900 (1976) 10, 11

Gerard, Forrest J., Assistant Secretary of the Interior for Indian Affairs, February 1, 1979, attached to Application for Stay of Mandate Pending Certiorari before the Tenth Circuit Court of Appeals in this case 18

Interview with Asbra, Donald J. (Chief, Contracting and Grants Administration Staff, Bureau of Indian Affairs, Washington, D.C.) 17, 19

Interview with Brorson, John (Minneapolis Area Contracting Officer, Bureau of Indian Affairs) 17

Interview with Marion, Duane (Sacramento Area Contracting Officer, Bureau of Indian Affairs) 17

Letter from Farmer, Loren J., Assistant Area Director, Aberdeen Area Office, Bureau of Indian Affairs, to Hans Walker, Acting Associate Solicitor, Division of Indian Affairs, U.S. Dept. of the Interior (December 27, 1979) 18

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. 79-48

CECIL D. ANDRUS, Secretary of the Interior, *et al.*,
Petitioners,

v.

GLOVER CONSTRUCTION COMPANY,
Respondent.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

INTEREST OF THE *AMICI*

Amici are five Indian organizations, ten federally recognized Indian tribes and two Alaska Native regional corporation.

The Association on American Indian Affairs, Inc., is a nonprofit membership corporation organized under the laws of the State of New York for the purpose of protecting the rights and improving the welfare of American Indians. The Association is the largest Indian-interest organization in the United States, and is nationwide in scope with a membership of 50,000 that consists of both Indians and non-Indians.

The National Congress of American Indians, Inc., is a nonprofit association of 146 Indian tribes, including most of the major tribes in this country. It was incorporated

in Oklahoma in 1954 to represent the interests of the Indian tribes of this country, and maintains its national headquarters in Washington, D.C.

The Alaska Federation of Natives, located in Anchorage, Alaska, is composed of the twelve regional groups established under the Alaska Native Claims Settlement Act.

The California Tribal Chairmen's Association is a nonprofit corporation formed under the authority of the Indian Self Determination and Education Assistance Act. This statewide organization consists of thirty-one federally recognized tribes in California, with its central office in Sacramento.

The Montana Inter-Tribal Policy Board is an association of all federally recognized tribes in Montana, and maintains its offices in Billings.

The Arapahoe Tribe of the Wind River Reservation, Wyoming, the Assiniboine and Sioux Tribes of the Fort Peck Reservation, Montana, the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota, the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, the Crow Tribe of the Crow Reservation, Montana, the Hoopa Valley Tribe of the Hoopa Valley Reservation, California, the Metlakatla Indian Community of the Annette Islands Reserve, Alaska, the Miccosukee Tribe of Indians of Florida, the Seneca Nation of Indians of New York, the Shoshone Tribe of the Wind River Reservation, Wyoming, and the Standing Rock Sioux Tribe of North Dakota and South Dakota are important federally recognized Indian tribes which govern their reservations.

NANA Regional Corporation, Inc., and Cook Inlet Region, Inc., are Alaska Native corporations formed

under the Alaska Native Claims Settlement Act, 43 U.S.C. §§ 1601 *et seq.* (1976). NANA maintains its principal offices in Kotzebue, Alaska. Cook Inlet's offices are located in Anchorage.

This case presents a question of great and continuing concern to the *Amici*—whether Indian preference statutes enacted by Congress can be relied upon by Indian tribes and Indian-owned corporations to further their social and economic development. In the present case, the *Amici* are concerned with this broad issue in a specific context—namely, whether the Buy Indian Act, 25 U.S.C. § 47 (1976), which provides a preference for the "employment of Indian labor and the purchase of products of Indian industry" retains vitality in light of the advertising requirements of the Federal Property and Administrative Services Act of 1949, 41 U.S.C. §§ 252, 253 (1976).

In terms of its potential impact on American Indians, the importance of this question cannot be overstated. Virtually every Indian-owned construction company depends on the contracts it is awarded through the Indian preference established under the Buy Indian Act. Indeed, many of these Indian-owned companies have come into existence in large measure because of this Indian preference.

If the Court of Appeals' decision in this case is upheld, the ultimate effect of the determination on the *Amici* Indian tribes, as well as on numerous other Indian tribes whose local Indian-owned enterprises are heavily dependent upon Buy Indian Act contracts, will be extremely deleterious. The reservation economies of the *Amici* Indian tribes are uniformly in an undeveloped or underdeveloped state and they depend in significant degree on the economic stimulus attributable to contracts awarded

to Indian-owned firms by the Bureau of Indian Affairs under the Buy Indian Act.

The *Amici* submit the attached brief in order to assist the Court in recognizing that the decision of the United States Court of Appeals for the Tenth Circuit misconstrues the intended scope of the Buy Indian Act, and contravenes the numerous precedents of this Court concerning appropriate principles of statutory construction. The immediate parties are not likely to address the specific points which *Amici* propose to discuss, and such discussion thus may be helpful to the Court.

SUMMARY OF ARGUMENT

A review of this case, in light of this Court's decision in *Morton v. Mancari*, 417 U.S. 535 (1973), demonstrates that the Indian preference provisions of the Buy Indian Act retain vitality despite the advertising requirements of the Federal Property and Administrative Services Act. A determination that the Buy Indian Act does not encompass road construction contracts not only would be inconsistent with the purposes of the legislation, but also would have a debilitating effect on the economic life of numerous Indian tribes and Indian-owned corporations, which would increase their dependence on the Government – the very evil sought to be avoided by the Act. In view of the foregoing, a determination that the advertising requirements of the Federal Property Act are applicable here violates the settled rules of statutory construction concerning the repeal of statutes by implication and the nullification of specific legislation by general.

ARGUMENT

This case, like *Morton v. Mancari,* 417 U.S. 535 (1974), concerns the continued vitality of an Indian preference statute–the "Buy Indian Act" (25 U.S.C. §47)–with its roots in Indian appropriations acts of the late nineteenth century. The Buy Indian Act exempts contracts made by the Secretary of the Interior using "Indian labor" and "products of Indian industry" from ordinary competitive advertising requirements common to federal procurement. The specific issue in this case is whether this preferential exemption from advertising requirements survives the Federal Property and Administrative Services Act of 1949 (codified in scattered sections of 41 U.S.C.).

In *Morton v. Mancari, supra,* this Court determined that provisions of the Equal Employment Opportunity Act of 1972, 42 U.S.C. §§ 2000 *et seq.* (1976), generally forbidding racial discrimination in federal employment did *not* abrogate a statutory employment preference for qualified Indians in the Bureau of Indian Affairs (BIA) found in the Indian Reorganization Act of 1934 and earlier, nineteenth century Indian appropriations acts. This Court held that the 1972 Act did not repeal by implication the prior Indian preference statutes, reasoning as follows:

> . . . Appellees encounter head-on the 'cardinal rule . . . that repeals by implication are not favored.' . . . There is nothing in the legislative history . . . that indicates affirmatively any congressional intent to repeal the 1934 preference . . . .
>
> This is a prototypical case where an adjudication of repeal by implication is not appropriate. The preference is a longstanding, important component of the Government's Indian program. The

> anti-discrimination provision, aimed at alleviating minority discrimination in employment, obviously is designed to deal with an entirely different and, indeed, opposite problem. Any perceived conflict is thus more apparent than real.

417 U.S. at 549-50.

This Court in *Mancari*—analyzing the relationship between the general 1972 Act and the specific Indian employment preference provisions—also concluded that:

> . . . [T]he Indian preference statute is a specific provision applying to a very specific situation. The 1972 Act, on the other hand, is of general application. Where there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment.

Morton v. Mancari, 417 U.S. at 550-51. *Accord, Bulova Watch Co. v. United States*, 365 U.S. 753, 758 (1961) ("a specific statute controls over a general one 'without regard to priority of enactment'"); *Rodgers v. United States*, 185 U.S. 83, 87 (1902) ("a later statute . . . will ordinarily not affect the special provisions of [an] earlier statute").

The present case is strikingly similar to *Mancari*. Here, as in *Mancari*, a subsequent, general statute governing federal contracting (rather than employment) practices is silent on the subject of contracting for purchases of Indian products (rather than employment of Indians) by the BIA. Here, as in *Mancari*, a prior, longstanding statutory scheme authorizes a preference for Indian products (rather than employees). The later general statute does not reflect any congressional intent to repeal the specific statute establishing Indian preference.

The court below avoided the obvious parallels to *Mancari* by holding that the Buy Indian Act does not apply to roadway construction projects, and thus does not conflict with the Federal Property and Administrative Services Act, which clearly does apply to such projects. This brief will show that the Court of Appeals' restrictive reading of the Buy Indian Act is clear error, and that the language and historical context of that Act establish its broad, remedial purposes to encourage Indian labor of all kinds and purchase of all varieties of Indian products. *Amici* will further show that the very mischief sought to be remedied by the Buy Indian Act and similar contemporaneous statutes—Indian unemployment and dependence on the federal Government—is produced by the decision below. For these reasons, the maxims of statutory construction reaffirmed in *Mancari* cannot be avoided and must be applied to vindicate the policies of the Buy Indian Act.

1. The language and historical context of the Buy Indian Act evidence broad remedial purposes to increase productive employment and enterprise by Indians and reduce Indian dependence on the Government.

The Buy Indian Act as now codified was contained as Section 23 of the Act of June 25, 1910, 36 Stat. 861. Essentially similar provisions are found in virtually every Indian appropriations act between 1886 and 1908.[1]

---

[1]Act of May 15, 1886, c. 333, 24 Stat. 29, 46; Act of March 2, 1887, c. 320, 24 Stat. 449, 466-67; Act of June 29, 1888, c. 503, 25 Stat. 217, 237; Act of March 2, 1889, c. 412, 25 Stat. 980, 1002; Act of August 19, 1890, c. 807, 26 Stat. 336, 360-61; Act of March 3, 1891, c. 543, 26 Stat. 989, 1014-15; Act of July 13, 1892, c. 164, 27 Stat. 120, 143-44; Act of March 3, 1893, c. 209,

[footnote continued]

Contrary to the holding below,[2] it requires no "stretch of the imagination" to construe the statutory language to include road construction projects. Road construction is clearly a "product of Indian industry." The statutory language is general and inclusive, not narrow. At the time of the Act, Congress knew that Indians were engaged in a great variety of federally encouraged productive enterprises (see p. 12, *infra*)—*including road construction.* For example, the 1908 Indian Appropriations Act specifically appropriated money for a road on the Hoopa Valley Indian Reservation, "the labor for said construction to be performed as far as practicable by the Indians of the Reservation." Act of April 30, 1908, 35 Stat. 70, 77.[3] The floor debate on this proviso stressed that Indians should be gainfully employed and paid for the work they do:

27 Stat. 612, 639; Act of August 15, 1894, c. 290, 28 Stat. 286, 312; Act of March 2, 1895, c. 188, 28 Stat. 876, 907; Act of June 10, 1896, c. 398, 29 Stat. 321, 348-49; Act of June 7, 1897, c. 3, 30 Stat. 62, 90; Act of July 1, 1898, c. 545, 30 Stat. 571, 595; Act of March 1, 1899, c. 324, 30 Stat. 924, 946; Act of May 31, 1900, c. 598, 31 Stat. 221, 246; Act of March 3, 1901, c. 832, 31 Stat. 1058, 1083; Act of May 27, 1902, c. 888, 32 Stat. 245, 273-74; Act of March 3, 1903, c. 994, 32 Stat. 982, 1006; Act of April 21, 1904, c. 1402, 33 Stat. 189, 216; Act of March 3, 1905, c. 1479, 33 Stat. 1048, 1077; Act of June 21, 1906, c. 3504, 34 Stat. 325, 326; Act of March 1, 1907, c. 2285, 34 Stat. 1015; Act of April 30, 1908, c. 153, 35 Stat. 70, 71; Act of June 25, 1910, c. 431, 36 Stat. 855, 861.

[2]*Glover Constr. Co. v. Andrus,* 591 F.2d 554, 560 (10th Cir. 1979).

[3]This project was no isolated instance. The Annual Report of the Commissioner of Indian Affairs for 1907 observes that near Phoenix, Arizona, "Indians have been constantly engaged in road construction under an Indian foreman, and a few have been employed as mechanics and in the cement work" (p. 12-13).

> "I know of no good reason why they [the Indians] should not be compensated. I believe, if you want to make responsible, self-respecting American citizens of these people, you ought to place them as nearly as possible upon a plane of right and justice with other people." 42 Cong. Rec. 2643 (1908) (remarks of Sen. Heyburn).

The historical context of the Buy Indian Act, moreover, indicates that its purposes were broadly remedial and in no way restrictive. While there was little congressional debate on the specific "Buy Indian" provisions themselves during the years between 1886 and 1910, the principles themselves that appear in general debate concerning Indian appropriations and Indian policy[4] confirm Judge McKay's observation, dissenting below, that:

> "[t]he obvious purpose of the Buy Indian Act is to encourage Indian economic development by freeing Indian industry from the competitive strictures of advertised bidding requirements."

591 F.2d at 563. The dominant Indian policy of this period was to "civilize" the Indians by converting them from hunters into farmers and laborers. In the final three decades of the nineteenth century, Congress repeatedly recognized that the game on which western tribes depended had been drastically diminished.[5] De-

[4]This Court has indicated on several recent occasions that a discussion of legislative and related materials which describe the historical setting for Indian statutes can be extremely useful in determining what meaning should be given the legislation. *Cf.* Rosebud Sioux Tribe v. Kneip, 430 U.S. 584 (1977); DeCoteau v. District County Court, 420 U.S. 425 (1975).

[5]*E.g.*, Debate on the Indian Appropriations Act of 1896, 28 Cong. Rec. 2026 (1896) (remarks of Rep. Johnson of North Dakota).

prived of game, Indians became largely idle on the reservations where they had been confined, and dependent chiefly on the Government for support through rations, provisions and annuities promised in earlier treaties.

The centerpiece legislation of the period, the Allotment Acts,[6] sought to eradicate this idleness and dependency by encouraging productive labor. The incentive for labor was allotment of individual parcels of reservation land to each adult Indian. *See, e.g.,* F. PRUCHA, AMERICAN INDIAN POLICY IN CRISIS: CHRISTIAN REFORMERS AND THE INDIAN, 1865-1900 (1976) (hereafter "Prucha"), ch. 8, esp. pp. 227-28, 242, 257. Each allottee was to work his own land, and through work to learn settler traditions and acclimatize himself to settler ways. *See generally* D. OTIS, THE DAWES ACT AND THE ALLOTMENT OF INDIAN LANDS, (1973), esp. pp. 15-18; *Mattz v. Arnett,* 412 U.S. 481, 496-97.

A primary theme in the Indian Appropriations Acts throughout this period was to train Indians to be self-supporting in "civilized occupations" so that they would no longer be dependent on the Government. For example, Representative Sherman of the House Committee of Indian Affairs, the manager of the 1908 Indian appropriations bill, stated:

> What we all desire, what we all hope for, is that ultimately the individual Indian will become a self-supporting and law abiding citizen, and, of course,

---

[6]The General Allotment Act of 1887, 24 Stat. 388 (current version at 25 U.S.C. § 331 *et seq.* (1976)), was implemented by special statutes ratifying agreements with or unilaterally alloting lands of particular tribes. *See, e.g.,* Mattz v. Arnett, 412 U.S. 481, 497 & n.19 (1973).

> allotment is one of the necessary prerequisites for that end.
>
> 42 Cong. Rec. 1418 (1908).
>
> * * *
>
> The theory of ultimately ridding ourselves of the care and charge of the Indians is to give them allotments, put them in condition upon the allotments so they can be self-sustaining, thereby relieving ourselves of the burden and relieving them also of the handicap of any direct aid, and also relieving ourselves to a certain extent of the burden of caring for them.
>
> 42 Cong. Rec. 1694 (1908).

In debate concerning a provision funding the Carlisle Indian Industrial School,[7] Representative Olmstead quoted the following passages from the Board of Indian Commissioners' report to the Secretary of the Interior:

> "The present policy in the administration of Indian affairs may be characterized as a policy which emphasizes self-help, opens the way for it, and leads the Indians out from reservation life and tribal life into the economic, social, and civil life of American citizens."

---

[7]Indian education in this period was also designed to produce self-reliance and reduce dependence on the Government. The Carlisle School was opened in 1879 at abandoned military barracks in Carlisle, Pennsylvania, with a vocational and manual labor curriculum, and became the prototype for a series of government operated manual-labor boarding schools for Indians. PRUCHA, pp. 274-79. As Prucha, a leading contemporary historian of Indian policy, concludes:

> The purpose of Indian education, ultimately, was to make the Indians self-supporting—not only as a means to advancing the individual's manhood but, quite practically, to bring an end to the enormous governmental outlays needed to maintain large numbers of Indians who had lost their old means of subsistence and had not taken up any new ones. [*Id.* at 270.]

Our honored Commissioner of Indian Affairs, Mr. Leupp, in his published report for 1906, at page 6, says:

"The feature of Indian civilization upon which the Office has laid its greatest stress during the year just past has been its policy for inducing the young and able bodied Indians who have no profitable work at home to leave their reservations and go out into the world to make a living as white men do."

And again, on page 12, he says:

"To push even a part of these Indians into actually earning money in a big, competitive world, where there are no rations, will do more than any other one thing could do to awaken the spirit of self-respect in which alone lies the doom of the ration system."

On page 13, speaking of the Zuni dam in New Mexico, he says:

"Here we have Indians employed on an Indian enterprise in an Indian reservation—conditions less desirable than those of outside employment, but much better than those obtaining, for example, inside of the Sioux reservations, where it has been necessary to contrive artificially new lines of work for the sake of keeping the Indians busy."[8]

Besides road construction work,[9] Indians in this period were engaged in farming,[10] logging and milling lumber,[11]

[8] 42 Cong. Rec. 1706–07 (1908). *See also* 33 Cong. Rec. 1353–54 (1900) (remarks of Mr. Stephens of Texas, Chairman of House Committee on Indian Affairs).

[9] *See* p. 8, *supra*.

[10] Instructors were brought onto reservations to teach the Indians to farm. This was seen as a key means in "instructing these

[footnote 10 continued following page]

[11] *See* 1909 CIA, p. 56.

construction of dams and irrigation projects and handling freight and constructing railroads,[12] all encouraged by the Government. The federal efforts to promote meaningful work for Indians were managed by a BIA employee, Mr. Charles E. Dagenett, a Peoria Indian, who was considered a model of what this policy was intended to accomplish:

> Mr. Chas. E. Dagenett, a Peoria Indian, is a conspicuous example of an Indian who has proven equal to a task usually assigned to white employees. He is a great factor in the development of his own race and of invaluable assistance to the Government as supervisor of Indian employment. His duty requires the finding of work for Indians and the finding of Indians for the work. He has been so successful that, beginning alone three years ago, it has been necessary to give him assistants located at different points in the Indian country. Under his intelligent supervision hundreds of Indians have been placed at work on railroads, irrigation ditches, in beet fields, and sundry employments for which their strength and abilities are equal. He is a type of Indian that the office is striving to develop—a self-supporting, self-respecting, useful American citizen.

Annual Report of the Commissioner of Indian Affairs, 1909, p. 6.

Amici submit that the language and historical context of the Buy Indian Act leave no doubt as to its extending

[footnote 10 continued from previous page]

Indians in civilized methods of earning a livelihood." 28 Cong. Rec. 2026 (1896) (remarks of Rep. Johnson of North Dakota). Indians were also employed as laborers on private off-reservation farms. *See, e.g.*, 1909 Report of the Comm. Ind. Affairs ("CIA"), p. 7; 1906 CIA, pp. 6–10.

[12] *See, e.g.*, 1908 CIA, pp. 29–31.

to road construction projects. But even if there were any question as to the statute's scope, this Court has repeatedly held that statutes enacted for the benefit of Indians are to be liberally construed in their favor. As this Court emphasized recently in *Bryan v. Itasca County*, 426 U.S. 373, 381 (1976):

> . . . [I]n construing this 'admittedly ambiguous' statute, *Board of Comm'rs v. Seber*, 318 U.S., at 713, we must be guided by that 'eminently sound and vital canon,' *Northern Cheyenne Tribe v. Hollowbreast*, 425 U.S. 649, 655 n.7 (1976), that 'statutes passed for the benefit of dependent Indian tribes . . . are to be liberally construed, doubtful expressions being resolved in favor of the Indian,' *Alaska Pacific Fisheries v. United States*, 248 U.S. 78, 79 (1918).

Accord, Wilson v. Omaha Indian Tribe, 442 U.S. ___, 99 S.Ct. 2529, 2537 (1979) ("'statutes passed for the benefit of dependent . . . Indian tribes are to be liberally construed'"); *Squire v. Capoeman*, 351 U.S. 1, 6 (1956) ("Doubtful expressions are to be resolved in favor of [Indians]"); *Choate v. Trapp*, 224 U.S. 665, 675 (1912) ("The construction, instead of being strict, is liberal").

2. The decision below imperils numerous opportunities for productive employment by Indians and dramatically increases their dependence on the Government—the very evils sought to be avoided by the Buy Indian Act.

To be sure, federal Indian policy "has by no means remained constant" since the Buy Indian Act was enacted. *See Village of Kake v. Egan*, 369 U.S. 60, 71 (1962); *McClanahan v. Arizona Tax Commission*, 411 U.S. 164, 171-73 (1973). The Indian policies of the turn

of the century—to acculturate Indians by encouraging productive labor while reducing dependence on the United States Government—have been replaced by broader goals of Indian economic development.[13] Yet, as President Nixon observed in his 1970 Message to Congress:[14] "[o]n virtually every scale of measurement—employment, income, education, health—the condition of the Indian people ranks at the bottom." *See also* AMERICAN INDIAN POLICY REVIEW COMMISSION, FINAL REPORT, Vol. I, 91-94 (1977).

Most significantly for present purposes, the very mischief that the Buy Indian Act sought to remedy—lack of opportunities for productive Indian employment and dependence on the federal government—is produced by the decision below. On most Indian reservations, the major employers are in the public sector—the United States Government (chiefly the Bureau of Indian Affairs) and the Tribe itself. Crippling poverty, high unemployment and inadequate education combine with the contin-

---

[13] *See, e.g.*, Indian Financing Act of 1974, 25 U.S.C. §§ 1451 *et seq.* (1976); Indian Self Determination and Education Assistance Act of 1975, 25 U.S.C. §§ 450 *et seq.* (1976).

The policy of the Buy Indian Act—including the waiver of general advertising requirements and the preference for the Indian workers—has been specifically incorporated into the Indian Self Determination and Education Assistance Act. 25 U.S.C. 450e(b), 450j(a). Regulations to implement this provision have been promulgated. 44 Fed. Reg. 62,510, 62,513 (1979) (to be codified in 41 C.F.R. § 14.7). All solicitations and contracts covered by the Act must contain a clause stating that contractors will give employment preference to Indians and Indian subcontractors. 44 Fed. Reg. 62,513. For contracts over $50,000, where at least a portion of the work will be on or near a reservation, the contractor must also, among other things, solicit bids initially only from Indian firms and must accept a bid from an Indian firm, so long as a reasonable bid is received. 44 Fed. Reg. 62,513.

[14] 116 Cong. Rec. 23,258 (1970), 6 Weekly Comp. of Pres. Doc. 894 (1970).

uing effects of pervasive discrimination to stifle the ability of Indians to establish and operate private businesses successfully.[15]

Despite such handicaps, Indian tribes and individual entrepreneurs have established some private businesses which produce a variety of goods and services. The 1979 BUYERS GUIDE TO PRODUCTS MANUFACTURED ON AMERICAN INDIAN RESERVATIONS[16] identifies 91 private Indian manufacturing businesses, ranging in size from two to 672 employees. Together, they provide a vital mainstay for many tribal economies by employing thousands of Indians in the manufacture of goods ranging from wood products to printed circuit boards and precision machined metal components. In addition, tribes have established over a hundred tribally-owned enterprises, and individual Indians own several hundred non-manufacturing businesses (such as stores, gas stations, etc.).

The vast majority of these Indian companies are small businesses which suffer a chronically high failure rate. For struggling Indian companies, contracts negotiated under the Buy Indian Act can provide the margin of success needed to overcome the numerous obstacles to their survival. The dollar amounts contracted under the Buy Indian Act provide a very significant source of funds for Indian tribal and individual businesses.

---

[15]A comprehensive 1979 listing of Indian-owned and controlled organizations and Indian consultants, for example, only located seven Indian accounting firms, twenty-eight Indian architectural firms and thirty-one Indian engineering firms. P. Bartow, [Pub. L. 93-] 638 Consultants (April 1979) (study done under Bureau of Indian Affairs Contract No. 9C50-0100211).

[16]Economic Development Administration, U.S. Dept. of Commerce and Bureau of Indian Affairs, U.S. Dept. of the Interior.

> In Fiscal Year 1972, of the total of 2,308 prime contract awards made by BIA, 1,332 or 57.7 percent were negotiated pursuant to the 'Buy Indian' Act. The dollar value of all prime contract awards aggregated $153,656,914; the 'Buy Indian' Act share represented 41.2 percent or $63,364,234.[17]

17 M. LUKACZER, THE FEDERAL BUY INDIAN PROGRAM 15 (1975).

In fiscal year 1977, Buy Indian construction contracts totalled $24,009,000 out of a total Bureau of Indian Affairs construction program of $78,962,000.[18] These funds supported ailing tribal economies and provided contracts which bonding difficulties often prevent tribally owned construction companies from obtaining elsewhere.[19] In addition to aiding individually owned Indian

---

[17]These figures include contracts with tribes, and are the most recent comprehensive national figures available.

Buy Indian contracting operates under the requirements of 20 BIAM 1, a policy statement first issued by the Commissioner of Indian Affairs on March 3, 1976, which requires that contracts be let to the lowest Indian bidder and that the price be fair and reasonable. Buy Indian contracting often involves competition between Indian companies. For example, 12 of 13 Buy Indian contracts signed by the Sacramento Area Office of the BIA from July 1975 through January 1, 1980 involved competition. Telephone interview with Duane Marion, Sacramento Area Contracting Officer, January 2, 1980. In the Minneapolis Area, 14 of 17 construction contracts in Fiscal Year 1978 involved competition. Telephone interview with John Brorson, Area Contracting Officer, January 3, 1980.

[18]Interview with Donald J. Asbra, Chief, Contracting and Grants Administration Staff, Bureau of Indian Affairs, U.S. Department of the Interior in Washington, D.C. (December 14, 1979). As indicated at footnote 21 *infra* and accompanying text, this Buy Indian figure dropped sharply as a result of the injunction against Buy Indian road construction contracts entered in this case. In Fiscal Year 1978, Buy Indian construction contracts fell to $8,664,000.

[19]*See* footnote 22 *infra*.

construction firms, Buy Indian road construction contracts help tribes to build and maintain roads in areas not effectively served by any other governmental agency.[20]

Buy Indian road construction comprised $11,052,318 in Fiscal Year 1977, before plummeting to $2,267,711 in Fiscal Year 1978 as a result of the District Court injunction in this case.[21] The experience of the Standing Rock Sioux Tribe provides a dramatic example of how the decision below crippled a successful effort to help develop a reservation which has an unemployment rate exceeding 30 percent of the labor force.

The tribally-owned Standing Rock Road Construction Company ("Company") was chartered by the Standing Rock Sioux Tribe in 1977. The company purchased heavy road construction equipment, and during two years in operation, was a major economic enterprise on the Standing Rock Reservation, with a substantial number of Indian employees. The company was involved

---

[20] Indian families living outside the Bureau approved network of roads have to rely on some other [entity] for road maintenance including snow removal. The Tribe uses their equipment to take care of these off network roads and other Tribal projects. However, in order to amortise [sic] their capital investment in road equipment they have contracted with the Bureau under the Buy Indian Act for road construction, and maintenance plus construction of plant facilities.

Letter from Loren J. Farmer, Assistant Area Director, Bureau of Indian Affairs, Aberdeen Area Office, to Hans Walker, Acting Associate Solicitor, Division of Indian Affairs, U.S. Dept. of the Interior (December 27, 1979).

[21] Affidavit of Forrest J. Gerard, Assistant Secretary of the Interior for Indian Affairs, February 1, 1979, attached to Application for Stay of Mandate Pending Certiorari before the Tenth Circuit Court of Appeals in this case.

in a number of reservation construction projects, including as a subcontractor, a new seven million dollar high school. After the court below rendered its decision in this case, however, the BIA stopped negotiating road construction contracts with Indian firms. Thus, the source of virtually all work done by the company ceased. Attempts to continue operations by seeking contracts through competitive bidding were futile,[22] and the company was forced to liquidate its assets and terminate operations in July, 1979.[23]

The impact of the decision below is not limited to construction contracts alone.[24] The experience of the Assiniboine and Sioux Tribes of the Fort Peck Reserva-

---

[22] Private construction projects, outside the Buy Indian Act, customarily require bid bonds and performance bonds. These are not generally provided by private bonding companies to tribally-owned enterprises operating on reservations because state courts have no jurisdiction to enforce the terms of the bonds against Indian-owned enterprises on a reservation. *See generally* Bryan v. Itasca County, 426 U.S. 373 (1976); Fisher v. District Court, 424 U.S. 382 (1976) (*per curiam*); McClanahan v. Arizona Tax Commission, 411 U.S. 164 (1973).

[23] The Metlakatla Indian Community of the Annette Islands Reserve planned to enter into a contract with the Bureau of Indian Affairs for all future road construction on its Reserve, but these plans were suspended by the decision below.

[24] Since the Buy Indian Act clearly applies to roadway construction projects, the effect of the decision below cannot be limited to road construction alone, but necessarily threatens all Buy Indian contracts.

At the present time, there are over 500 Indian firms on the BIA's Indian bidders list, approximately one-quarter of which are construction contractors. Telephone interview with Donald J. Asbra, Chief, Contracting and Grants Administration Staff Bureau of Indian Affairs, U.S. Dept. of the Interior (January 4, 1980).

tion and the Metlakatla Indian Community illustrate the potential disruption of the decision on the economies of all tribes. The Assiniboine and Sioux Tribes have chartered three tribally owned enterprises—West Electronics, Assinboine and Sioux Tribal Industries and Fort Peck Manufacturing Company. These companies are successful business ventures which produce, among other things, electronic products and military camouflage materials. Under the Buy Indian Act, these companies during the past five years have obtained contracts totalling over $600,000. They have provided employment and on the job training for over 700 Indians during this period. If the decision below stands, these contracts may be discontinued or challenged in court.

The Metlakatla Indian Community of the Annette Islands Reserve established a tribal construction enterprise to increase tribal revenue and employment after major federal facilities on the Reserve were closed between 1973 and 1976.[25] In 1977, the Community agreed to provide a site on the Reserve for a new federal fish hatchery on the condition that the Community would have the right of first refusal to construct the hatchery under the Buy Indian Act through its tribally-owned construction enterprise. The enterprise has completed Phase 1 of the hatchery under a $1,123,010

[25]A major federal presence on the Reserve commenced during World War II and continued through 1977 in the form of the Federal Aviation Administration's (FAA) civilian jetport and Coast Guard installations. In 1974, FAA relocated its operations to Ketchikan, Alaska. In 1976-1977 the Coast Guard relocated its activities from the Reserve, admitting that its departure would have "a significant adverse socio-economic impact" on the Reserve. *See* Metlakatla Indian Community v. Adams, 427 F.Supp. 871, 874 (D. D.C. 1977).

Buy Indian contract and is currently completing Phase 2 under a $2,830,000 Buy Indian contract. It expects to contract with the Bureau under the Buy Indian Act in the next fiscal year for $2,701,000 to finish the hatchery.[26] These contracts are jeopardized by the decision below.

3. The principles reaffirmed in *Mancari* clearly control this case.

Since the Buy Indian Act must be read as encompassing a broad range of Indian employment and business activity, including road construction projects, the determination of the court below that the Federal Property Act's advertising requirements supersede the Indian preference of the Buy Indian Act violates the accepted rules of statutory construction reaffirmed in *Mancari.* As noted, pp. 5-6, *supra,* a decision to apply the advertising requirements would mean, in effect, that Congress intended to repeal the Buy Indian Act by implication when it enacted the Federal Property Act, and would conflict with the rule of statutory construction that a general statute should not be allowed to nullify a specific statute operating in very limited situation.

In *Mancari,* this Court also emphasized that every effort should be made by courts to reconcile different statutes on the same subject. Specifically, this Court held as follows:

> In the absence of some affirmative showing of an intention to repeal, the only permissible justifi-

[26]This project has thus far provided twelve jobs on the Reserve, significant training and experience for the tribal construction enterprise management and its employees, and constitutes, in addition, a key element in the effort to preserve the salmon fishery in northern Pacific waters.

> cation for a repeal by implication is when earlier and later statutes are irreconcilable. . . .
>
> * * *
>
> The courts are not at liberty to pick and choose among congressional enactments, and when two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective. "When there are two acts upon the same subject, the rule is to give effect to both if possible . . . . The intention of the legislature to repeal 'must be clear and manifest.'"

417 U.S. at 550, 551. *Accord, Tennessee Valley Authority v. Hill,* 437 U.S. 153, 189-90 (1978).

The Buy Indian Act and the Federal Property Act plainly are reconcilable within the meaning of the *Mancari* analysis. First, nothing in the Federal Property Act or its legislative history speaks to repeal of the Buy Indian Act. Second, the congressional policies underlying each of the statutes do not conflict. According to the Court of Appeals' decision below, the Federal Property Act was enacted to enable federal agencies to obtain "the best and lowest bid for the benefit of the American taxpayers in 'high cost' construction categories . . . ." 591 F.2d at 562. The Buy Indian Act, while relating to contracts let by the Bureau of Indian Affairs, was intended by Congress to achieve very different objectives in a narrow area—encouragement of Indian labor and reduction of Indian dependency on the federal Government by freeing Indian industry from the competitive strictures of advertised bidding requirements. The legislation was in furtherance of the federal government's unique trust relationship with Indian tribes, and represented one of many such Indian preferences developed by Congress

for the purpose of bringing Indians into the economic mainstream of American life.[27] *Cf. Morton v. Mancari,* 417 U.S. at 550.

CONCLUSION

In light of the foregoing, *Amici* respectfully submit that the judgment of the Court of Appeals should be reversed.

Respectfully submitted,

REID PEYTON CHAMBERS
2030 M Street, N.W.
Washington, D.C. 20036
Attorney for the Assiniboine and Sioux Tribes of the Fort Peck Reservation, the Shoshone Tribe of the Wind River Reservation, and the Standing Rock Sioux Tribe

ARTHUR LAZARUS, JR.
600 New Hampshire Avenue, N.W.
Washington, D.C. 20037
Attorney for the Association on American Indian Affairs, Inc., the Seneca Nation of Indians, the Cheyenne River Sioux Tribe, the Metlakatla Indian Community and the Miccosukee Tribe of Indians

[Counsel list continued]

---

[27] Significantly, in *Mancari,* this Court linked the Buy Indian Act directly to the Indian employment preference provision which was at issue there. *See* Morton v. Mancari, 417 U.S. at 538 n.2.

RICHARD A. BAENEN
1735 New York Avenue, N.W.
Washington, D.C. 20006
Attorney for the National Congress of American Indians, Inc., the Alaska Federation of Natives, the California Tribal Chairmen's Association, the Montana Inter-Tribal Policy Board, the Arapahoe Tribe of the Wind River Reservation, the Confederated Salish and Kootenai Tribes of the Flathead Reservation, the Crow Tribe, the Hoopa Valley Tribe, and NANA Regional Corporation, Inc.

MONROE E. PRICE
612 South Flower Street
Los Angeles, California 90017
Attorney for Cook Inlet Region, Inc.

Of Counsel:

WILLIAM R. PERRY
SONOSKY, CHAMBERS
& SACHSE
Washington, D.C. 20036

W. RICHARD WEST, JR.
BETH LABSON-FREEMAN
FRIED, FRANK,
HARRIS, SHRIVER
& KAMPELMAN
Washington, D.C. 20037

GLENN P. SUGAMELI
WILKINSON, CRAGUN
& BARKER
Washington, D.C. 20006